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T H E R O Y A L C O M M I S S I O N

I N T H E M A T T E R O F T H E W O R K M E N ' S C O M P E N S A T I O N A C T

P a r t 2 .

T H E H O N O R A B L E M R . J U S T I C E G E O R G E A . M C G I L L I V R A Y

C o m m i s s i o n e r

by

J a n O s t r o w s k i (a n d M r s . S . O s t r o w s k i)

o f G r y f f i n L o d g e , H u n t s v i l l e , O n t a r i o .



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In addition to the brief (Part 1.) presented to the Royal Commission on September 26, 1966 we respectfully submit the following remarks regarding operation of the Workmen's Compensation Act.

1. Right of choice of physician.

Usually the injured workman has freedom of initial choice of his physician. This, in most of the cases, is a practical necessity, accepted by the Board.

Nevertheless the Board retain full right to determine who shall provide the treatment to those workmen who are Board's responsibility.

This right is exercised unilaterally not only in providing first aid (whenever feasible) - but particularly whenever the necessity of specialized medical services occurs.

It would be to the great advantage to both parties (Board & injured workman) if workman and his family doctor would have the choice of specialists. This will give more confidence of receiving treatment on equal basis with other patients, and will also eliminate the Board from all complaints for providing unsatisfactory service.

2. Lack of Rehabilitation for injured female workers.

W.C.B. operates a large, modern Rehabilitation center at Downsview. Despite the fact, that women compose a very substantial part of Labour Force in Canada - there is no

rehabilitation center for injured women(Downsviev case only for injured male workers).

There is also no Vocational and re- training unit for partly disabled workmens (man and women) which could provide them with new skills, according to their post accident possibilities.--

3. Stability of pension. -

Based on the average wages at the time of accident⁷ the pension of permanently disabled workmen remains one of the existing injustices.

Although some of most conspicuous examples of injustice to the " old timers " has been eliminated by most recent amendments and regulations - nevertheless the principle remains.--

There is no reason or necessity in present times, when nations aim is to achieve maximum of social justice and security, to continue this injustice.

Compensation for permanently disabled should be flexible in accordance with constantly rising cost of living, wages allowances etc.

Why those, who, suffered more, should be left out of benefits enjoyed by rest of the society.--

4. Burocracy.

The attached copy of the appeal illustrates the bureaucracy and other deficiencies in functioning of the Board.

The apparent politness and smoothness in dealing with parties conceal very often serious deficiencies - more srious still, when the health,wellbeeing,future,and possibly the life of a workman is at stake.

It must be really wrong when:

- a) It takes four days to get an injured workman to the operating room,while proper treatment requires the surgery to be performed within 24 hours.
- b) When Medical Department do not react for 3 years to substantiated complaints regarding medical care.
- c) When there is evident lack of control over the quality of medical services provided by the Board.
- d) When the Board ,making a lump sum payment,advises that this is being done because " The percentage of perma - nent disability is not expected to increase "- and then in following few month a ^esrrious surgery is necessary.
- e) When it takes over 10 weeks to ~~get~~ obtain appointment for medical examination.
- f) When it takes 5 weeks,several letters,phone calls and personal intervention to obtain a permission to get a pair of orthopaedic shoes.

These are only few examples of our experience in dealing with Workmen's Compensation Board.

Review Committee

The Workman's Compensation Board

Claim 3189435

I was notified(letter dated March 4, 1966) That I have been awarded additionally \$ 59.75 a month(for 14 month, dating from December 27 th, 1965 " as a result of the permanent disability resulting from your accident of December 11 th, 1952 "

Following my request, I was further advised by Mr. Chairman that above pension represents 65 per cent disability and is based on the rate of personal coverage of \$ 1.200.00 per year at the time of my accident.

I wish to appeal this decision, as not being just for following reasons:

1. Due to the partial permanent disability resulting from the accident of Dec. 11, 1952. I have been awarded eleven years ago a pension of \$ 5.25 per month. I presume, that the amount of disability, ~~was assessed as~~, was also 5.25%. Additional disability, assessed as 59.75 %.- resulted from the disastrous surgery, performed by Dr. W. Lotto on October 1, 1963 to whom I was referred by the W.C.B.

This operation made me completely crippled, unable

to move even a short distance with the help of two canes. Further-more, after almost six month in hospitals I was discharged on March 10, 1964 with non-united osteotomy - as fit to gradually resume my regular work, and assurance, that I will be completely fit to my regular work (as a cook and other ^{duties}) for summer 1964.

During the treatment in hospital I complained many times to Dr. Lotto about my condition and deformities created by his operation and requested several times for another surgery to correct the deformities. All my complaints and requests ^{were} ~~has been~~ entirely ignored, and even ridiculed, by assuring me, that " everything is all right ", that all deformities exist in my mind or imagination, that they will disappear etc.

It has to be made clear, that during the period between Sept. 29, 1963 and March 10, 1964 I was seen by several other doctors (Dr. Wright, Wylie, Crawford and also by Dr. White) - all highly qualified specialists.

Each one, even by looking at my hip, was fully aware of all deformities created by Dr. Lotto's surgery. - but not one of them even tried to warn me about my condition, do ^{anything} ~~something~~ about them or even suggest consultation or further surgical treatment.

This fact compelled me to look for opinion and advice in New York. Only due to my own endeavours I have discovered the truth about my condition, so carefully

concealed for more than seven months.

I am aware now, that the McMurray Osteotomy may not always (15-20%) bring beneficial results, and some unlucky patients have to accept lack of improvement.

I am also aware, that this surgery, if properly performed, never brings worsening of patient condition, never is followed by these kind of deformities.

The truth I had to face was, that instead of help and relief I was sent home by Dr. Lotto :

- 1) with non-united osteotomy
- 2) With the spline loose in the greater trochanter
- 3) With ~~increased~~ movement on the site of the osteotomy
- 4) 90 degrees varus deformity.
- 5) 45 degrees external rotation deformity of the distal fragment of the femur.
- 6) 30 degrees fixed flexion contracture deformity.
- 7) 5 cm. shortening of my left leg
- 8) Limitation of all movements of my left leg.
- 9) Increasing pain in lumbar region and right leg.

On May 29, 1964 I received a letter from W.C.B. advising me about ^{an} ~~the~~ appointment with Dr. Lotto, arranged for June 29, 1964. The same day I mailed to the Board the following letter:

" To-day I received your letter of May 27, 1964 with a transportation warrant dated May 28 th attached.

of June 11, 1964. :

W. Robert Harris, M.D., F.R.C.S. (C)
609 Medical Arts Building
Toronto 5

June 11, 1964.

Mr. Ostrowski,
Box 608,
Huntsville, Ont.

Dear Mr. Ostrowski:

I have now heard from the Compensation Board that they are willing to have me look after your wife.

Would you please let me know when you would like her to come down to have the surgery done. If you wish to leave this until after the summer season, I should put her name on the admission list now, as reservations are running about four months behind. If you would prefer to go ahead sooner, we can arrange to declare her an "urgent" case, and try to get her in within the next few weeks.

Yours sincerely,

Dr. W. Harris.

WRH. 1

Following my husband personal intervention with the Board, on June 16, 1964, the assignment of my case to Dr. Harris has been confirmed - still without any medical examination and without any interest from the Board regarding the event which led to the necessity of corrective surgery.

Corrective surgery performed by Dr.W.R.Harris on Jhy15,1964. was only partly successful, reducing (according Dr.Harris statement) shortening of my left leg to 30 mm., external rotation of the shaft to 15 degrees, restoring the valgus position (with abduction deformity) and leaving the fixed flexion deformity at 30 degrees unchanged.

I underwent this operation in the state of complete physical and mental exhaustion due not only to the disastrous surgery of Oct.1st,1963 - but also due to the total neglect of my general health condition by Dr.Lotto. In this circumstances the corrective surgery was complicated by pneumonia ~~which~~ which considerably prolonged my hospitalisation and left permanent impairment to my health.

As a final result, despite a very serious corrective surgery, I am left with disability of 65%, according to Board estimate. Calculation of the award is wrongly based on my 1952 coverage since at the time of crippling surgery of 1963 - my insurance rate was \$ 2.000 per year.

I consider it as an only just base to calculate my additional disability.

2. Percentage of my present disability at 65 % can not be considered as fair or equitable at my present health condition. As a University of Warsaw (Agricultural College) graduate - I had no chance in Canada to apply for refresher ^{short} ~~courses~~ courses or work in my profession - and since 1963 I am not able to do so. As a cook or chef during the season, and a handyman during

the rest of the year, — (by hard but necessary choice for 16 years ~~previous~~ to 1963 operation) I am also unable to work at all. Being old and a physical and nervous wreck, I have no chance to learn or aquire any other prof~~ess~~ion. Even office work is impossible for me - because I can not seat on any chair for ^a/~~long~~ while without stiffening of my whole left leg and severe pain in both legs and spine. I was also informed that W.C.B. do not provide any rehabilitation program for women - and I was not offerd any one after the accident.

I am not able to take care of simple home work. Even aⁿ insignificant amount of work aggravate~~s~~ my pain, causes more pain stiffnes and limitation of movements.

In fact I am totally disabled and need permanent assistance even at home — without any hope for improvement. All I can expect is a further degeneration of my present deplorable condition .

In conclusion I am totally disabled and the scale usually applied to assess ^a/~~comparable~~ disability can not be applied in my case.

3. I wish also to bring to the attention of the ^e/~~Review~~ Committee s~~everal~~ facts which can not be left without consideration.

a) From the Board correspondence produced by Dr. Lotto at the examination for discovery it is obvious, that ^{The}/~~Medical~~ Department was fully aware of the ~~negligence~~ ^{the}

consequences of the accident of 1952. (1. Letter of April 9, 1953 W.C.B. to Dr. White. 2. Letter Sept. 30, 1953 Dr. White to W.C.B.) Despite that Med. Dept. neglected to warn me about the necessity to take certain precaution. I was just left, without any warning regarding the consequences of continuing my kind of work.

The W.C.B. never offered me any kind of rehabilitation or any program to prepare me for any other suitable employment.

Medical department limited itself to the role of a spectator until it was too late for change of my work - and too late for non-surgical treatment.

b) In the first part of October 1962 I received from W.C.B. letter dated October 3, 1962 regarding commutation of my monthly pension of \$ 5.25.. In this letter, signed by Comptroller A.G. MacDonald, the Board explains that a lump sum payment is made " When monthly pension is \$ 15.00 or less and the percentage of permanent disability is not expected to increase "

This statement is in direct contradiction to the medical facts being at that time in the possession of the Medical Dept. and can not be considered as fair assessment of my condition by the officers of a Public Corporation. To the contrary - it has given me an unwarranted assurance regarding stability of my condition.- It created, in fact, a conviction, that the first signs of acute pain may be due to a temporary fatigue, not to deterioration of the affected joint.

c) My accident occurred in the early afternoon hours of Dec. 11, 1952. After the first aid on the spot, followed by X-ray examina-

tion Dr. Gallagher diagnosed the fracture dislocation of my left hip, and immediately, during the late afternoon called the office of the W.C.B. for further instruction. It was impossible to get in touch with anyone in W.C.B. because offices were closed and there was no one to decide even if the case is W.C.B. responsibility, or to order transportation to Toronto.

The following day, after several long distance conversations, Dr. Gallagher was informed, that W.C.B. is sending ambulance to take me to Toronto. It took another day ^{of} W.C.B.'s bureaucratic procedure to order local ambulance from Huntsville (Fred Loff).

The same morning Dec 13, 1952 just before transportation, Dr. Gallagher, assisted by two other doctors (Johnston and Salmon) acting on instructions from Toronto, reduced the dislocation, and then I was taken to Toronto Western Hospital.

Due to nurses negligence in handling me, my hip has been again dislocated on Dec. 13, 1952 and remained so until the operation, performed by Dr. A.W.M. White on Dec 15, 1952.-

It is well established in medical practice, that such injury has chance of recovery without traumatic effects - only, if reduction is performed during 24 hours following the fracture dislocation.-

Due to bureaucratic operation of W.C.B. office (at that time) the surgery could have been done only four days after the accident. These circumstances, as any person familiar with medicine will admit - sealed the future of my injury.- But again there was no one to tell me this truth.-

I was, as thousands of other injured, considered as a claim number 3189435 - but not as an intelligent human being

interested in my future and reasonable enough to prepare for that future.

~~4~~ I strongly support my previous request, that as long as any chance exist to obtain further improvement of my condition this chance should be given to me.

If, in the opinion of the Board, there is no chance of further treatment - I request a clear and detailed medical explanation why this is impossible ~~in~~ my particular case.

In conclusion I ask the Review Committee, after answering question N.4, to assess my present permanent disability as 100%, based on wages on the insurance ~~on the insurance~~ premium paid in 1963 - being ^{\$}2.000 per year.

I also request the right to be present at the Review Committee hearing, previous admission to the files of my claim, and, if necessary the possibility to present further reasons and facts supporting my appeal.

Until now I am denied any knowledge of this files.

This make an appeal an useless formality, tantamount to the denial. ~~and~~

MD Howson

October 29, 1966.

